IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO 2568 OF 2006

Smt. Gulabidevi Rampyare Dube .. Petitioner.
V/s
The Mun. Corporation Gr. Bombay
And others. ..Respondent No.1-3
And
M/s Lalmani Co.op. Hsg. Society
Ltd. ..Respondent NO.4.

Shri V.K. Gupta i/b Gupta & Gupta for the petitioner.
Ms. Nisha Dabhade for respondent NO.1.

CORAM : S.B. MHASE, J.
DATE : 18TH APRIL, 2006.

P.C.

. Heard.

2. The order dated 30/11/2005 passed in Chamber Summons No. 620 of 2005 in Long Cause Suit No. 5276 of 2000 is under challenge. By the said order the respondent No.3 Society is allowed to be joined as a party defendant in L.C. Suit No. 5276 of 2000.

3. It is an admitted fact that the present petitioner is plaintiff and he has filed the said suit against respondent No.1, Municipal Corporation Greater

Bombay, claiming permanent injunction and challenging the notice issued under Section 351 of B.M.C. Act. The said notice was issued by the Corporation since the plaintiff has carried out unauthorised construction.

4. According to the petitioner, she is a tenant of the premises which were handed over to her by respondents 2 and 3. As against that the added defendant i.e. respondent No.3, society of the tenants of the said building, claims that the premises on which unauthorised construction has been carried out are belonging to the said society. Thus, the question of unauthorised construction is under consideration. The said unauthorised construction is within the premises given by the respondent Nos. 2 and 3 and/ or on the premises of added respondent No.3 society is a question. That question has to be decided so as to justify and/or set aside the action of respondent No.1 and therefore, it has been found that the society is a party which is necessary for adjudication of the dispute. According to the learned Counsel for the petitioner, the society has no interest in the pending litigation because society contends that the petitioner is not a tenant of the said society. Even assuming this to be correct for a moment

the question is, if the petitioner has carried out unauthorised construction and if the said construction is on the premises of the added defendant/society, the added defendant/society is also entitled to ask Municipal Corporation to remove the unauthorised construction. Therefore, thereby they are entitled to ask for removal of the construction. Therefore, the City Civil Court is justified in allowing the chamber summons. Hence no interference is called for. Therefore, petition is dismissed.

[S.B. MHASE, J.]